

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK KEATON,

Petitioner,

Case No. 4:16-cv-14186

v.

HON. TERRENCE G. BERG

SHAWN BREWER,

Respondent.

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DERRICK KEATON,

Petitioner,

Case No. 4:16-cv-14497

v.

HON. TERRENCE G. BERG

SHAWN BREWER,

Respondent.

_____ /

**ORDER DISMISSING CASE NUMBER 4:16-cv-14497 AND DIRECTING
THAT COPIES OF THE PETITION FILED IN CASE NUMBER
4:16-cv-14497 BE USED FOR SERVICE ON THE WARDEN AND THE
MICHIGAN ATTORNEY GENERAL IN CASE NUMBER 4:16-cv-14186**

On November 28, 2016, petitioner Derrick Keaton filed a *pro se* habeas corpus under 28 U.S.C. § 2254. The habeas petition challenged Petitioner's Wayne County, Michigan convictions for first-degree murder, breaking and entering a building with intent to commit a larceny, and felony firearm. Petitioner alleged as grounds for relief that he was denied effective assistance of counsel in the trial court, in the appeal of right, and during post-conviction proceedings. *See Keaton v.*

Brewer, No. 4:16-cv-14186 (E.D. Mich. Nov. 28, 2016). On December 13, 2016, United States Magistrate Judge R. Steven Whalen ordered Petitioner to submit two copies of the habeas petition to the Court within twenty-one days of his order.

On December 28, 2016, Petitioner submitted two copies of his habeas petition to the Court, along with his signed affidavit concerning his ineffective-assistance-of-counsel claims. Although it appears to the Court that Petitioner intended copies of the habeas petition to be used to cure the deficiency in case number 4:16-cv-14186, the Clerk of the Court treated the copies as a new action and assigned the number 2:16-cv-14497 to the new action. The case was randomly assigned to another judge in this district, but subsequently reassigned to this Court as a companion case to the earlier-filed case. As a result of the change in the place of holding court, the office code was changed from 2 to 4, and the case number for the new action became 4:16-cv-14497.

The two cases (4:16-cv-14186 and 4:16-cv-14497) have identical habeas petitions. In such a situation, when

[f]aced with a duplicative suit, the federal court may exercise its discretion to stay or dismiss the suit before it, allow both federal cases to proceed, or enjoin the parties from proceeding in the other suit. *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997).

“[S]imple dismissal of the second suit is [a] common disposition because plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.” *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138–39 (2d Cir. 2000); *see also Missouri v. Prudential Health Care Plan, Inc.*, 259 F.3d 949, 953–54 (8th Cir.2001) (joining other courts that have held a district court may dismiss one of two identical pending actions).

Twaddle v. Diem, 200 F. App'x 435, 438 (6th Cir. 2006).

Here, the two habeas petitions are identical. Accordingly, it is **ORDERED** that case number 4:16-cv-14497 is summarily **DISMISSED** without prejudice. All further documents pertaining to Petitioner's habeas case shall be filed in case number 4:16-cv-14186.

It is further **ORDERED** that the Clerk of the Court may use copies of the habeas petition filed in case number 4:16-cv-14497 for service on the warden and the Michigan Attorney General in case number 4:16-cv-14186. The order to correct the deficiency in case number 4:16-cv-14186 is **VACATED**.

It is further **ORDERED** that Petitioner **SHALL** re-submit and file his affidavit in case number 4:16-cv-14186.

SO ORDERED.

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Dated: September 15, 2017

Certificate of Service

I hereby certify that this Order was electronically submitted on September 15, 2017, using the CM/ECF system, which will send notification to each party.

s/A. Chubb
Case Manager